

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A26 045 212 - Dallas

Date:

In re: CHRISTOPHER SAMUEL NORRIS

JAN 22 1996

IN DEPORTATION PROCEEDINGS

APPEAL

INDEX

ON BEHALF OF RESPONDENT: Stephen N. Wakefield, Esquire
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Dallas, Texas 75201-3320

ON BEHALF OF SERVICE: James T. Reynolds
District Counsel

CHARGE:

Order: Sec. 241(a)(1)(D), I&N Act [8 U.S.C. § 1251(a)(1)(D)] -
Conditional resident status terminated

APPLICATION: Waiver under section 216(c)(4)

In a decision dated January 15, 1993, the Immigration Judge found the respondent to be statutorily eligible for a waiver pursuant to section 216(c)(4)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1186a(c)(4)(B), but denied the application in the exercise of discretion. The respondent has appealed. The appeal will be sustained, and the respondent's application for a waiver under section 216(c)(4)(B) of the Act will be approved.

The sole issue presented on appeal is whether the respondent, who satisfied the Immigration Judge that he entered into marriage with his United States citizen spouse in "good faith," deserves a favorable exercise of discretion. The Immigration Judge concluded that the respondent did not merit a favorable exercise of discretion because of the short duration of the respondent's qualifying marriage under section 216 (IJ at 16).

On appeal, the respondent argues that, considering the favorable factors in his record, he merits a favorable exercise of discretion. A waiver under section 216(c)(4) is granted as a matter of the Attorney General's discretion. The burden lies with the applicant to establish that he warrants a favorable exercise of discretion. Therefore, an alien in these circumstances should present evidence on any relevant factors which he believes support the favorable exercise of discretion in his case. In the absence of any adverse factors, however, a waiver under section

216(c)(4)(B) should ordinarily be granted in the exercise of discretion. Cf. Matter of Pula, 19 I&N Dec. 467 (BIA 1987), (asylum under section 208 of the Act); Matter of Arai, 13 I&N Dec. 494 (BIA 1970) (adjustment of status under section 245 of the Act).

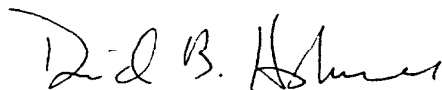
Upon review, we find that the respondent merits relief in the exercise of discretion. The sole adverse factor which the Immigration Judge relied upon in denying relief was the brevity of the respondent's marriage. However, we do not consider this to be an adverse factor, particularly where the Immigration Judge was wholly satisfied that the respondent had entered into the marriage in good faith. Cf. Matter of Pimentel, 17 I&N Dec. 482 (BIA 1980) (adjustment of status properly denied in exercise of discretion where alien married solely to facilitate entry as an immigrant). The Immigration Judge here found the respondent's testimony concerning his marriage to be "highly credible" and "candid" (IJ at 12).

Moreover, the Immigration Judge recognized that the respondent has many other favorable factors in his record. He found the respondent to be a person of good moral character with a solid employment record and ties to the community. We observe that with the passage of time, the respondent's period of residence in the United States is now also a significant equity. Considering these favorable factors, and in the absence of any adverse factors, the respondent has demonstrated that he merits relief under section 216(c)(4)(B) as a matter of discretion.

Accordingly, the appeal will be sustained.

ORDER: The deportation proceedings are terminated.

FURTHER ORDER: The conditional basis of the respondent's lawful permanent residence is hereby removed.



FOR THE BOARD